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ABSTRACT

These materials are part of the Project Benchmark series designed to teach secondary students about our legal concepts and systems. This unit focuses on individual rights and fair procedures under the law. The materials outline the Bill of Rights, due process guarantees, the right to a fair hearing, fair and unfair trials, search and seizure laws, exceptions to the lawful arrest procedure, the necessity for a search warrant, and equal protection guarantees. A case fact sheet, role sheets, case procedures, complaint information, and jury instruction sheet for a mock trial which illustrates these legal concepts are provided. (DE)

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Bill of Rights

Congress of the United States,

begun and held at the City of New York, on

Wednesday, the fourth of March, one thousand seven hundred and eighty

THE Conventions of a number of the States having, at the time of adopting the Constitution, expressed a desire, in order to prevent misconstruction or abuse of its powers, that further declaratory and restrictive clauses should be added: And as extending the ground of public confidence in the Government, will best ensure the beneficent ends of its institution.

RESOLVED, by the Senate and House of Representatives of the United States of America in Congress assembled, two thirds of both Houses concurring, That the following articles be proposed to the Legislatures of the several States, as amendments to the Constitution of the United States, all or any of which articles, when ratified by three fourths of the said Legislatures, to be valid to all intents and purposes, as part of the said Constitution, viz.

ARTICLES in addition to, and amendment of the Constitution of the United States of America, proposed by Congress, and ratified by the Legislatures of the several States, pursuant to the fifth article of the original Constitution.

Article the first. After the first enumeration required by the first article of the Constitution, there shall be one Representative for every thirty thousand, until the number shall amount to one hundred, after which, the proportion shall be regulated by Congress, that there shall be not less than one hundred Representatives, nor less than one Representative for every forty thousand persons, until the number of Representatives shall amount to two hundred, after which, the proportion shall be regulated by Congress, that there shall not be less than two hundred Representatives, nor more than one Representative for every fifty thousand persons.

Article the second. No law varying the compensation for the services of the Senators and Representatives, shall take effect, until an election of Representatives shall have intervened.

Article the third. Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and petition the Government for a redress of grievances.

Article the fourth. A well regulated militia, being necessary to the security of a free State, the right of the people to keep and bear arms, shall not be infringed.

Article the fifth. No soldier shall, in time of peace, be quartered in any house, without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.

Article the sixth. The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Article the seventh. No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case, to be a witness against himself, nor be deprived of life, liberty or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Article the eighth. In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defence.

Article the ninth. In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

Article the tenth. Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Article the eleventh. The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Article the twelfth. The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

Frederick Augustus Muhlenberg Speaker of the House of Representatives.

ATTEST,

John Beckley, Clerk of the House of Representatives.

Sam. A. Otis Secretary of the Senate.

John Adams, Vice President of the United States, and President of the Senate.

FAIR PROCEDURES

PROJECT BENCHMARK

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Fair Procedures

SARA LINSCOTT, 22, IS LIVING in a 10- by 15- foot room. She shares this room with twenty-three other women. During midsummer, the temperature climbs to well over 100 degrees. The women have little to eat, and their room is a parade ground for worms, lice, rats, and bedbugs.

Where is Sara Linscott? In a Persian prison. She and six other Americans there are accused of being part of an organized drug-smuggling ring. Although one of the Americans confessed, and claimed that the others knew nothing about the hashish found in their van, all are charged.

The group's legal rights as Americans guarantee them nothing in Persia. They are permitted to have an attorney. But hearings drag on and on, and the trial for which they are waiting may be delayed for months or even years. At a trial, neither Sara nor the others will have any right to confront their accusers, nor may they appeal to a higher court if convicted. And the penalty for drug-smuggling in Persia is life imprisonment.

Your Basic Rights

SUPPOSE THAT INSTEAD OF BEING CAUGHT smuggling narcotics abroad, Sara and her friends had been arrested because they were suspected of trying to bring a kilo of marijuana across the Mexican border into the United States. What would happen to them then? You say that they'd go to jail just the same. Probably so. But there is an important difference. Before any of their legal rights could be taken from them in this country, they would first be entitled to a fair hearing. That is, they would be entitled to certain guaranteed rights.

The United States Constitution sets out our basic rights. The best-known are found in the first ten amendments to the Constitution and are collectively termed the Bill of Rights. Briefly, here's what the Bill of Rights says:

1. *Congress may pass no laws against freedom of religion, freedom of speech, or freedom of the press; nor may it deny our right to assemble peaceably, or to petition the Government to set wrongs right.*

2. *We have the right to keep and bear arms.*

3. *In times of peace, soldiers may not be placed in private homes without the owners' consent.*

4. *Our homes, papers, and effects may not be searched or seized unreasonably; any warrant issued must be based on probable cause.*

5. *We may only be charged with a crime by a Grand Jury or by a presentment -- a formal accusation -- and we may not be tried twice for the same crime. We may not be compelled to be witnesses against ourselves. Life, liberty, or property may not be taken from us without due process of law. Nor may the Government take our private property for public use without paying us a fair price.*

6. *We're entitled to a speedy and public trial by an impartial jury. We have a right to be informed of the charges against us, to be confronted by the witnesses against us, and to obtain witnesses to testify for us. We are also entitled to a lawyer.*

7. *We have a right to a jury in most civil suits that are brought against someone for money.*

8. *The courts may not set excessive fines or bail. Nor may we be subjected to cruel and unusual punishment.*

9. *We may be entitled to other rights which are not mentioned in the Constitution.*

10. *Those powers not specifically given to the Federal Government or prohibited to the states by the Constitution are reserved for the states or the people.*

For many years after the Constitution was signed, most judges and lawyers thought these rights applied only to citizens in their dealings with the Federal Government. The Government couldn't pass a law prohibiting you, for example, from making a speech that had not been approved in advance. But many jurists felt a *state* could pass such a law if it wasn't at odds with its own constitution.

Then seventy-seven years after the Constitution was ratified, we adopted the 14th amendment. It says no *state* "shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; or shall any State deprive any person of life, liberty, or property without due process of law . . . ."

At first the United States Supreme Court gave that clause a rather narrow interpretation, but gradually the Court construed it as making certain parts of the Bill of Rights applicable to the states. So after many years and a number of different decisions, the Court has now held that the 14th amendment incorporates almost all of the first eight amendments and makes them applicable to states as well as to the Federal Government.

Due Process Guarantees Fair Procedures

ONE PHRASE WHICH IS INCLUDED in the fifth amendment to the Constitution, and repeated in the 14th amendment, is essential for the protection of the rights of all United States citizens. "Due process of law" is the phrase; and although it must be defined, no simple explanation exists. The Constitution itself provides no handy definition, so we must turn to the interpretations of judges, lawyers, and legal scholars.

Most generally due process of law is "justice; it is fair play; it is the 'ordered concept of liberty'; it is, perhaps, the whole spirit of the American legal system." (Federal Bar Association, *These Unalienable Rights - A Handbook of the Bill of Rights* (Chicago, 1973), p. 60.)

To be more specific, we may divide the concept of due process into two parts: substantive and procedural. The first part, substantive due process, refers to the fairness of a law itself. Neither Congress nor the executive branch may make "arbitrary, unreasonable or capricious" laws. Suppose, for example, Congress passes a law saying that men must pay twice as much tax on their incomes as women. Plainly such a law would be unfair and a denial of substantive due process; the courts would declare the law unconstitutional.

The second part of due process -- procedural -- is the part in which we are primarily interested. Procedural due process refers to the way in which a just law is enforced; it prohibits unfair methods of applying the law. Let's imagine that our double tax law is revised -- taxes are made equal for everyone. But suppose that any person who is late in paying his tax is immediately arrested and thrown into jail for a year, with no trial. Such an action would violate many of the person's basic rights. Even a delinquent taxpayer has a right to be notified of the charges against him, a right to a hearing, a right to an attorney, a right to confront witnesses against him, and so forth. Our courts would not permit such an unjust way of enforcing a law, even though the law itself *is* legal.

We often associate procedural due process with a person's rights within the context of a trial. And fair procedures are an essential part of a trial. Under the Constitution, we are guaranteed the right to tell our side of the story before either the Federal or a state government may take our lives, liberty, or property; we have a right to be heard and in a setting in which fairness is observed.

But there are other situations to which the broader concept of procedural due process applies as well. Fair procedures must be followed in any situation in which a person's legal rights are at stake. Suppose a woman says that police entered and searched her apartment without a warrant. Or a couple complains that the Government appropriated their property without paying for it. If a court decides that either of these claims is true, the people involved will be allowed legal recourse. They will have been the victims of unfair procedures -- and as such, they will have been denied their right to procedural due process.

Origins in England

WHERE DID THE CONCEPT OF due process -- a man's guarantee that the law plays fair -- originate? Were our founding fathers the first to develop this idea? Or did they build on a concept already several centuries old? The idea of due process was familiar to the colonists because its roots lay in *Magna Charta* -- the English charter of political and civil liberties signed by mad old King John in 1215 when his nobles told him to put his name on the dotted line, or else. John raged and gnashed his teeth, the history books say. But he signed the document. And by doing so, he pledged that his government would not put a free man in jail or take his property, "except by a legal judgment of his peers" -- in other words, only if a court heard the case, and a judge ruled on it.

The signing of *Magna Charta* was a tremendous victory for freedom because it meant the king lost much of his unbridled power. Previously if the king hadn't liked someone, he had simply told his guard: "Take this gentleman to the Tower." And that was the last ever heard of the unfortunate man. No trial, no appeal -- no right to complain, argue, or protest.

It was over a century after *Magna Charta* was signed before the idea of due process was put into the words we know today. But finally after years of protests and petitions by the people, King Edward III made a law which said:

> No man of what state or condition he be, should be put out of his land . . . nor taken, nor imprisoned, nor disherited, nor put to death, without being brought to answer by due process of law. . . .

A Fair Hearing

WE'VE SAID THAT DUE PROCESS GUARANTEES YOU a fair hearing. But how does this guarantee work? And why is it necessary? Many settlers came to the United States in search of personal freedom, such as the freedom to criticize their government if they felt it wasn't treating them fairly, and the freedom to worship as they pleased.

When the colonists decided to band together to form a united government, they were determined to preserve their personal liberties. They insisted

upon a Bill of Rights, which would state that the Federal Government could make no laws to take away their freedoms. We usually think of these liberties as freedom of speech, freedom of religion, and freedom of the press. But the colonists had even more in mind. For example, they wanted to assure their right to own property, enter into contracts, marry whomever they wished, and move from one community to another at will. Freedoms such as these are often termed the "right to life, liberty, and property" or the "right to life, liberty, and the pursuit of happiness."

Of course the colonists realized that it might sometimes be necessary to take away some of a person's rights. If an individual stole a horse or killed a man, he would be forced to give up his personal liberty and go to jail, or perhaps be hanged on the gallows. But the colonists wanted to make certain that a person be forced to relinquish liberties only after a fair hearing. They thought a fair hearing should include:

***Your right to notice, so you can get ready for court*

***Your right to be informed of your rights in court*

***Your right to know exactly of what you're accused*

***Your right to habeas corpus -- or a hearing to find out if you're being held a prisoner illegally*

***Your right to bail while awaiting trial*

***Your right to counsel*

***Your right to a public trial*

***Your right to a jury trial unless both sides expressly waive it*

***Your right to refuse to testify against yourself*

***Your right to confront and examine your accusers*

***Your right not to be tried twice for the same crime*

DUE PROCESS IN ACTION

LET'S LOOK AT AN EXAMPLE OF DUE PROCESS in action.

Say you and four friends, all over eighteen, have formed a rock group, which practices at your house every other night. You know that a bass, a trumpet, and three guitars can be noisy. Especially with the amplifier turned up to its full seventy-five watts. Still you didn't think you were disturbing the peace. Can your neighbor have you arrested and fined, or put in jail, because you upset his sleep? Maybe -- but not until you have had a chance to appear in

court and tell your side of the story. The police officer who checks your neighbor's complaint may merely cite you to appear in court. Or you might be arrested. If arrested, you could be released on bail, or on your own recognizance. Or you might have to stay in jail until your hearing.

At the hearing the judge arraigns you. That is, he tells you what offense is charged. He explains your constitutional rights. For example, he tells you that you have a right to have a lawyer. If you cannot afford one, the court will appoint a public defender for you. You also have a right to have witnesses speak on your behalf, and you may confront witnesses on the other side. You also have a right to a jury trial. Fair notice of the charges against you is an important part of due process.

Later at your trial you may appear in court with your lawyer and tell your story to the jury. You may testify or call others to speak for you. For example, you may testify that you have a large soundproof room in which you practice, so that the neighbors couldn't possibly hear your jam sessions. Your attorney may cross-examine witnesses who testify against you, trying to lessen the impact of their testimony. Under your attorney's careful questioning, for example, the complaining neighbor may admit that he's only heard you once -- not the dozen times he reported. Perhaps in your lawyer's argument to the court, he may try to show that you committed no offense. Or that the witnesses aren't telling the whole truth.

Let's suppose that after a fair and public trial the jury finds you guilty. The judge may send you to the county jail for up to ninety days, fine you up to $200, or both; he may put you on probation or perhaps merely let you off with a stern warning to turn down your sound. If you believe that your trial was not fair, you may appeal the decision to a higher court, which in a few cases may mean the United States Supreme Court. Your right to appeal is another part of your right to fair treatment in the hands of the law.

DIFFERENT RULES

IN THE ABOVE EXAMPLE suppose instead that you are under eighteen. Your case would then go to juvenile court. A juvenile court is *not* a criminal court; it is a special court for young people who get into trouble with the law or who need help because of family problems. The idea of juvenile court is to help and protect young people, not to punish them.

Because this court is a special one, the ordinary rules of evidence and normal court procedures mentioned in the example above don't apply. Hearings are informal and may be private. The minor does not have a right to a trial or a jury, but he does have to be proved guilty beyond a reasonable doubt, according to a recent ruling by the United States Supreme Court. (*In re Winship*, 397 U.S. 358 (1972))

Recently juvenile court procedures have been increasingly criticized. Why, critics say, shouldn't juveniles be allowed the same formal procedures which were developed in conjunction with adult criminal prosecutions? Why should we have two standards: one for those under eighteen, and another for those over? Why not due process for all?

Defenders of the juvenile court system claim that if juveniles are allowed all the formal procedures developed for adult criminals, the hearings will become legal battlegrounds. They argue that the system's protective aim will be destroyed if formal criminal procedures are followed.

California has been far ahead of many states in the field of juvenile justice. In 1961 the California Legislature revised juvenile court law to try to assure young offenders a fair hearing under procedures which were thought to be appropriate to the ameliorative function of the juvenile court. California would not have tolerated what the Arizona Supreme Court did in the case of *In re Gault*, 387 U.S. 1 (1967). This case begins with the arrest of a fifteen year old boy -- we'll call him George Sayers -- and ends with a United States Supreme Court ruling which in all states formalizes juvenile court procedures in a way which prevents hasty judgments of the kind which occurred in the *Gault* case.

When George was arrested no one notified his parents, who were both at work. The next day officers brought George before a juvenile court judge. The hearing was informal; there was no shorthand reporter to record what was said. No one told George he might consult with an attorney before his hearing, or that his parents might attend.

The judge asked the arresting officer -- who wasn't sworn in -- "What did this young man do?"

"George made an obscene telephone call from a phone booth near Malleby's Drug Store. We'd had complaints before, and we traced the calls to this particular area. So when I saw this kid looking around to see if he was being watched, and then slipping into the booth, I took a position in the booth next to his. I heard everything he said. It was pretty bad. You want me to repeat it, Your Honor?"

The judge frowned and shook his head. "That won't be necessary at this informal hearing. I know what an obscene phone call is." He turned to George. "Well, young man, since the policeman overheard you, I don't suppose you'll deny making the call?"

A frightened George looked around. There was no one there to advise him. He said, "No. I guess I did it, all right."

"You've done this kind of awful thing before?"

George looked at the floor. "Yeah."

"How often? A dozen times? Fifty times? I warn you -- I have reports from some of the people who have received these calls of yours."

"Maybe fifteen, twenty times in the past year, Judge."

"I see. Well, what you did was pretty serious. I hope you realize that. And I feel you should be corrected now so you won't ruin your life. I'm going to order you to the Industrial School where you'll remain until you are twenty-one. Maybe by then you'll have learned something."

When George's parents found out what had happened, they were furious. They thought that six years under lock and key was a pretty stiff order, whether it was called "correction" or "sentence." They appealed his case. Their attorney said George should have had the same rights at this juvenile hearing as an adult would have had at a criminal hearing. "George has not had the protection of due process guaranteed by the Constitution," the attorney said. "His parents weren't notified. He wasn't given time to prepare his defense. He wasn't told he needn't testify against himself. He should have had a chance to cross-examine witnesses and to bring in witnesses on his own behalf. Because of these omissions his rights have been infringed, and he should be released."

The attorney for the juvenile department pointed out that the criminal court rules weren't carried out for a very simple reason. "This isn't a criminal court. We're trying to help George. That's why we don't give him the same kind of trial we give an adult."

In this particular case, the appeal court ruled that George had been deprived of some of his fundamental rights; he had been denied due process of law. Therefore, the juvenile court judge's order was set aside. The judges who made the decision in George's case felt that juvenile procedures, as they existed in Arizona, did not provide adequate safeguards for a young person's rights. Many jurists hope that it will be possible to provide juveniles procedural fairness -- for example, the rights to notice, counsel, confrontation of witnesses against them -- without incorporating the system of formal procedures now used in felony trials.

UNFAIR TRIALS

A FAIR TRIAL, AS WE'VE SEEN, is something to which each of us is entitled. And our right to a fair trial depends on the courts providing us with the fair procedures guaranteed by the due process clause of the fifth amendment. Usually these rights -- knowing the charges against us, consulting with a lawyer, receiving a speedy, unprejudiced hearing before a fair-minded jury -- can be safeguarded and controlled by our courts. But there are circumstances which may prevent the courts from assuring our guaranteed rights -- such as when there

is a great deal of public interest in a case. Perhaps the accused or the victim is well known, or the crime a particularly horrifying one.

Let's take the case of nationally known Mayor Charles Flock (not his real name or office). One night Mayor Flock's wife was murdered, and the police arrested the Mayor as their prime suspect. His arrest made headlines throughout the country. Newspapers ran stories of the charges and the countercharges against him under banner headlines. The police questioned the Mayor repeatedly without his lawyer present. Before the trial, there was an inquest to decide how Mrs. Flock met her death. During this televised inquest, Mayor Flock was questioned before the cameras for more than five hours. The newspapers published the names and addresses of the jurors three weeks before the trial, and the jurors received all kinds of threatening letters and phone calls, some commenting on the case.

When the trial ended, the jury deliberated the Mayor's fate for five days. During this time the jurors were under lock and key; however they were allowed to make unsupervised phone calls. And many heard about newspaper articles containing rumors and information not legally proper for the jurors to consider. The jury convicted the Mayor.

Mayor Flock appealed his case to the United States Supreme Court. There his lawyers argued that all of the pretrial publicity had made a big impact on the jurors. And as a result they were prejudiced and couldn't weigh the evidence fairly. These factors kept the Mayor from having a fair trial, according to his lawyers.

The Supreme Court agreed. They ruled that Mayor Flock was denied due process of law and told the State either to try the Mayor again or set him free. In this case, a good deal of time had gone by, and the State elected to set the Mayor free. (*Sheppard v. Maxwell*, 384 U.S. 333 (1966))

This important case is still being discussed by judges, lawyers, and newsmen. The problem remains of reconciling the accused's right to a fair and speedy trial -- or due process -- with the concept of a public trial.

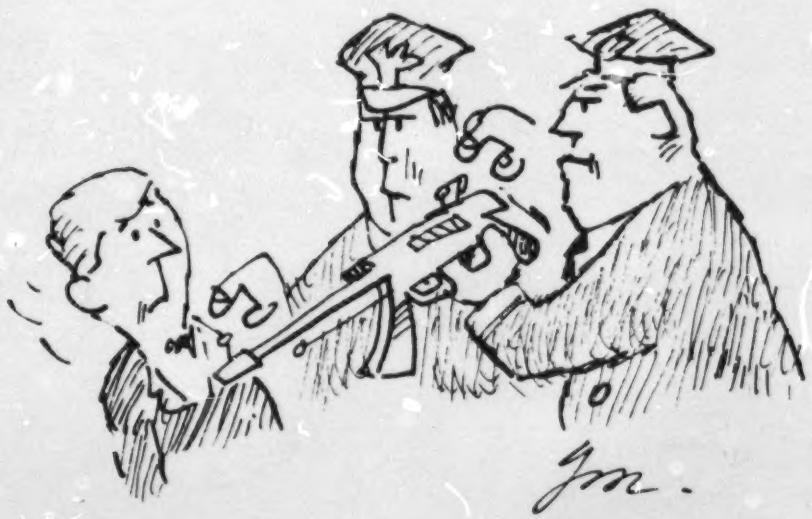
When a judge knows he has a "sensational" trial in the making, he may attempt to postpone it until public interest dies down. Or he may move the trial to another community where the people aren't so upset. Or occasionally he may issue a protective order, stating that witnesses, police, attorneys, and the parties themselves must not talk to anyone about the case. In these ways the judge will try to protect the defendant's right to due process. But he cannot actually forbid newsmen from attending the trial or writing about it, without interfering with the public's right to know. There is no simple solution to this legal controversy.

SEARCH AND SEIZURE

AMERICANS VALUE HIGHLY THEIR RIGHT to privacy and the right to be secure in their property. And these two rights sometimes merge in "search and seizure" cases. In an attempt to safeguard these rights, the fourth amendment to the Constitution, which prohibits illegal searches and seizures, was written.

The amendment ensures that your property may not be taken from you without the use of fair procedures or due process of law. Usually for a search to be legal, a judge must issue a warrant permitting the search to be made. And a judge will only issue a warrant if he has been presented with sworn facts which satisfy him that there is just cause why your property should be searched. Search warrants must be limited to specific objects and limited areas, and the officials who make the search must present a copy of the warrant to you before entering your home.

Do these rules apply to *every* case? No. There are exceptions. These exceptions depend largely on the facts of the particular case. There are certain general areas in which searches and seizures without warrants are permissible, and we will explore a few of these exceptions. But there are other areas in which the laws regarding search and seizure exceptions are so complex and subject to revision that we will only briefly mention them.



A simple exception to search and seizure rules occurs when a person voluntarily consents to a search. Officers may go to a man's home. "We understand you have a packing crate full of machine guns in your house, and we want it."

The man laughs. "You must have the wrong place. There are no machine guns here. Come in and look for yourselves."

Suppose the officers find the crate, cleverly concealed in the attic. May the man in the house claim the search was illegal because the officers didn't have a warrant? No -- because he gave up his fourth amendment rights. The law says that officers don't need a warrant if a person clearly and unequivocally consents to the search. But it's a different situation if the person is intimidated or frightened into silence by the officers.

In an actual case, a man's grandmother answered a rap on the door -- only to find four officers standing there. "We've got a search warrant," one of them announced. "We're coming in to look this place over." No one showed her a warrant, but she let them come in.

Was this consent? The United States Supreme Court ruled that it was not. "When a law enforcement officer claims authority to search a home under a warrant, he announces in effect that the occupant has no right to resist the search." This, the Court ruled, is coercion; and where there is coercion, there cannot be consent. (*Bumper v. North Carolina*, 391 U.S. 543 (1968))

Another exception to search and seizure rules is the situation in which no search is actually required -- the contraband or weapon is in plain sight. In this case a warrant is not necessary.

Roger Munn was slumped over the back seat of a car in a parking lot A police officer approached, thinking Roger might be sick, and asked him if everything was all right. When Roger only mumbled an answer, the officer asked him to get out of the car; and as the car door opened, the officer plainly saw a few capsules of seconal -- an illegal drug -- lying inside. In this example, the seizure of the capsules was proper; they were in full view of the officer -- he had not conducted a search to obtain them. (*People v. Manning*, 33 CA3d 586 (1973))

LAWFUL ARREST EXCEPTIONS

EXCEPTIONS TO SEARCH AND SEIZURE RULES sometimes occur in connection with lawful arrests. Suppose a man grabs something at the jewelry counter of a department store and runs for the door. A clerk cries out, "That man took a diamond necklace!" A police officer sees him and orders him to stop; when he doesn't, the officer chases him to the sidewalk outside and catches him. Here the officer arrests the accused and informs him of his rights.

The officer doesn't have a search warrant. May he search the man anyway? Yes; he doesn't need a warrant when someone has been properly arrested for a crime. The officer may search not only for the diamond necklace and other stolen goods, but also for weapons. The officer has a limited right to search at the time of a lawful arrest, whether or not he has a warrant.

Officers are also allowed to make a quick search -- "stop and frisk" -- as part of a reasonable investigation before a formal arrest. They may do this when they reasonably believe the person is carrying a weapon. As long as the sole reason for the frisk is to find a weapon, which might endanger the officer or others, the search is justifiable. If the officers happen to find evidence of a crime while looking for a weapon, the evidence may be used against the person searched. But the officer has no right to search only for evidence or to pat down everyone; any person searched must be a suspect or the subject of a reasonable investigation. (*Terry v. Ohio*, 392 U.S. 1 (1968); *Sibron v. New York*, 392 U.S. 40 (1968))

AUTO EXCEPTIONS

ANOTHER AREA IN WHICH SEARCH AND SEIZURE EXCEPTIONS are found is that of automobile searches. Officers often don't need a warrant to stop and search an automobile. The reason for this is that a suspicious person in a car can move quickly to another area; he can lose himself before officers have time to get a warrant. There's a big difference, the courts have pointed out, between allowing a search of a stationary structure such as a house, and allowing a search of a car which can be in another locality or jurisdiction* within a matter of minutes. (*Carroll v. U.S.*, 267 U.S. 132 (1925))

This does not mean that a police officer may stop you and search your car arbitrarily. Before he can examine your car without a warrant, he must have reason to believe that your vehicle is carrying contraband or evidence of a crime.

Late one night, Police Officer Wright stopped Malcolm Barnes because one of his headlights was out. When Malcolm couldn't produce a current registration certificate for his car, Wright opened the door to check the identification tag on the door panel. He saw what he believed to be marijuana seeds lying inside, so he searched the car and found several marijuana cigarettes.

Was this search legal? Officer Wright didn't have a warrant to search Malcolm's car. Nor did he stop Malcolm because he reasonably believed that Malcolm's vehicle contained contraband or evidence of a crime.

The Court of Appeal held that the search was proper. It said that a "law violation," such as a broken headlamp, would not be grounds for a warrantless vehicle search. However the lack of registration called for a limited investigation. And after officer Wright spotted the seeds, the court ruled, he had probable cause to believe that the car contained illegal goods, thus justifying a search without a warrant. (*People v. Spelio*, 6 CA3d 685 (1970))

In the absence of "furtive conduct" or other suspicious circumstances,

* *JURISDICTION is used in many different ways, so no single definition is entirely satisfactory. Basically jurisdiction means a court's power "to hear and determine" a matter. Jurisdiction gives a court power over people and property, and it makes a court's decisions enforceable. For example, jurisdiction gives a court the authority to send a guilty man to prison or to fine him a certain amount of money. A court's jurisdiction is limited in two ways: (1) by the territory of the county, state, or nation by whose authority it is exercised -- i.e., a California court doesn't have authority or jurisdiction over a resident of Maine or Nevada; and (2) by the applicable provisions of the Federal or State Constitution and by statutes or laws enacted by the U.S. Congress or the State Legislature -- i.e., a California statute says that the Superior Court has the jurisdiction or power to hear cases involving sums of $5,000 or more.*

officers are not justified in searching a vehicle incident to a minor traffic violation. (*People v. Kiefer*, 3 C3d 807 (1970)) For example officer Mahoney, approaching an illegally parked car, saw driver Ted Owen bend down as if he might be hiding something. When officer Mahoney questioned Ted about his action, Ted replied, "Yeah, man, I bent down . . . to tie my shoe." Officer Mahoney, fearing that Ted had concealed a weapon, conducted a warrantless search of the car. He found no weapon but he did find a bag of marijuana beneath the seat. Officer Mahoney then arrested Ted for possession of an illegal substance.

Ted and his attorney took the case to the California Supreme Court. They asked the court to suppress the evidence -- or to refuse to admit the marijuana found during the warrantless search. The court agreed, citing the *Kiefer* opinion in its decision: "The guiding principle behind the 'Kiefer rule' was that to constitute probable cause for an arrest or search, a 'furtive gesture' such as a motorist's act of bending over inside his car must be invested with guilty significance either by specific information known to the officer or by additional suspicious circumstances observed by him. In this case no such information or circumstances were present." (*Gallik v. Superior Court*, 5 C3d 855 (1971))

Unclear Exceptions

IN THE PRECEDING EXAMPLES, warrants were not required to permit an officer to search a person or seize goods and weapons. But there are many areas in which the legality of searches and seizures without warrants depends on a number of very fine points. The permissibility of auto searches in various situations, for example, is difficult to determine. And although police officers are not required to have a warrant to search the area immediately surrounding an arrested person, how is the extent of that area determined? If a man is arrested in his apartment, for example, how much of the apartment -- if any -- may an officer search in an attempt to find concealed weapons or evidence of a crime?

Many questions may be raised concerning juvenile rights, too. For example, does a violation of a curfew law give an officer the right to frisk or search a juvenile? May school authorities authorize the search of a student's locker?

Equal Protection

THE BILL OF RIGHTS, AS WE'VE SEEN, contains numerous provisions which forbid the Federal Government from encroaching on our rights as citizens. But for three-quarters of a century after the first ten amendments to the Constitution were ratified in 1791, these same rights weren't necessarily guaranteed us by our state governments. However since the California constitution and Bill of Rights were ratified in 1849, Californians have been guaranteed substantially the same basic rights as are found in the first ten amendments to the federal

Constitution, although the language differs in some respects. And in a few instances, California law is even more favorable to the rights of the accused than federal constitutional law.

In 1868, at the end of the Civil War, the 14th amendment was added to the Constitution. One provision of this amendment, as we mentioned earlier, extends to all the states the rights contained in the due process clause of the Fifth amendment. Originally lawmakers interpreted this provision as a general limit on the power which state governments could exercise over their citizens; no state could deprive a citizen of his life, liberty, or property without according him certain fair procedures and an opportunity to be heard. However over a period of several decades, the United States Supreme Court broadened this interpretation to mean that the states must respect *all* of the important fundamental human rights mentioned in the Bill of Rights.

In addition to mentioning due process of law, the 14th amendment speaks of "equal protection" under the law. Today it would be difficult to separate completely these two concepts. Specifically, equal protection means that no individual or group of individuals is any less equal or more equal in the eyes of the law. That is, all of our rights must apply equally to all people. In a more general sense, both concepts have come to mean that all citizens hold equal rights which cannot be arbitrarily taken away.

Notice that the 14th amendment says "No State shall . . . deny to any person within its jurisdiction the equal protection of the laws." The amendment doesn't say citizen; it includes aliens -- people from foreign lands who are neither American-born nor naturalized. Aliens don't have all the rights of United States citizens: they can't vote, for example, or hold political office, or work at certain jobs. But they are entitled to the protection of our laws, as you'll see later in the famous *Yick Wo* case.

The equal protection clause forbids unequal treatment in regard to personal, political, and property rights. And the clause applies to individuals, classes of people, and even corporations.

Most often the equal protection clause figures in cases involving discrimination against a class of people. Possibly the best known Court decisions applying this clause to a class of people are the civil rights decisions made during the past several decades. For example, the landmark 1954 *Brown v. Board of Education* (349 U.S. 294) case, which said that separate facilities for schoolchildren are inherently unequal, is based on the idea of equal protection of the laws -- regardless of race or color. And in other important civil rights

decisions, the Supreme Court has ruled that separate toilet facilities, separate trains and buses, separate lunch counters, and separate public swimming pools are *all* unequal and therefore illegal. These decisions also find their justification in the 14th amendment.

The equal protection clause also applies to businesses. Imagine that the city of Sacramento passes a law stating that grocery stores, meat markets, and fruit and vegetable markets must be closed on either Saturday or Sunday, and also evenings and holidays. Sacramento says this law is for the purpose of protecting public health. But it allows drug stores, tobacco shops, bakeries, restaurants, service stations, and all other kinds of businesses to stay open. A local court would say that the law deprives certain classes of businesses of equal protection. There is no reason for closing one group of stores and letting another group operate.

Finally, not all laws aimed at a class of people are discriminatory. California recently passed a law saying that all automobile mechanics and garages must pay a fee, be licensed, and follow certain rules. Is this discrimination against a class of people? Can the mechanics claim they are not getting equal protection? No; the law is reasonable and necessary for the protection of customers who bring in their cars for repairs.

Yick Wo

ONE OF THE EARLIEST CASES TO ARISE under the equal protection clause of the 14th amendment was that of *Yick Wo v. Hopkins*. (30 L Ed 220 (1886)) In this case, Yick Wo was not challenging the justice of the law requiring all laundrymen to have licenses, but rather the law's unequal enforcement.

The background was this. In the nineteenth century, a large number of unskilled Chinese laborers had come to California to work in the gold mines or on the transcontinental railroad. After mining declined and the railroad was finished, the Chinese remained. Work was scarce for everyone. But since the Chinese were willing to work longer hours for less money than anyone else, they received the few existing jobs -- and were often treated contemptuously in the process.

In 1885 a Chinese laundryman in San Francisco, Yick Wo, stood trial. He was arrested because he, like many other Chinese laundrymen, had failed to get a license to operate his steam laundry, as city law required. Some steam laundries, the city said, were fire hazards. During Yick Wo's trial, his lawyer and the District Attorney attempted to find out *why* the laundryman did not have the required license:

DISTRICT ATTORNEY MARTIN: Mr. Ames, what is your position at the place where you work?

MR. AMES: I am chief clerk to the Board of Supervisors of this city,

licensing restaurants, laundries, and other establishments in San Francisco.

MR. MARTIN: In your capacity as chief clerk, do you keep a record of all persons who are licensed to operate laundries?

MR. AMES: Yes.

MR. MARTIN: Is it your official duty to maintain such records and keep them up to date?

MR. AMES: It is, and I do.

MR. MARTIN: Do your records show that Mr. Yick Wo, the defendant in this case, has been licensed to operate a laundry in San Francisco?

MR. AMES: They do not. Mr. Yick Wo is not so licensed.

MR. MARTIN: Thank you, Mr. Ames. Mr. Boles, you may cross-examine.

MR. BOLES (counsel for Yick Wo): Mr. Ames, at the time this licensing law went into effect, how many laundries were operating in this city?

MR. AMES: About 320, give or take a few.

MR. BOLES: Of those 320, how many were certified by the fire and health departments as being safely and hygienically operated?

MR. AMES: All of them.

MR. BOLES: But if I am correct, you only granted licenses to 170 of

the laundries?

MR. AMES: That's right.

MR. BOLES: Is it not also right that all of the 150 laundry operators denied licenses were non-citizen Chinese?

MR. AMES: Well, we gave licenses to some citizen Chinese --

MR. BOLES: You're not responding to my question, Mr. Ames. I want to know if it is true that every one of those 150 people denied licenses were non-citizen Chinese?

MR. AMES: It's true.

MR. BOLES: Did you at any time deny a license to a certified laundry whose operator was *not* Chinese?

MR. AMES: Not to my recollection.

MR. BOLES: You testified, Mr. Ames, that Mr. Yick Wo did not have a license. Actually he was certified and he applied for one, did he not?

MR. AMES: Yes.

MR. BOLES: But you denied his application?

MR. AMES: Yes.

MR. BOLES: So the result of your denial of his license was that Mr. Yick Wo either had to go out of business or continue business in violation of the law?

MR. AMES: I guess you could say that.

MR. BOLES: Now, Mr. Ames, will you kindly tell this court and this jury why you denied licenses to Mr. Yick Wo and all the other certified Chinese laundrymen of San Francisco who applied for them?

MR. AMES: That was the policy of the Board of Supervisors.

ARGUMENTS TO COURT

IN SUMMING UP HIS CASE, the District Attorney explained that the Board of Supervisors demanded a licensing law to insure that laundry steam boilers be properly maintained and operated; the Board wanted to safeguard a city built largely of wood against disastrous explosions and fires.

The defense attorney maintained that a licensing law was, indeed,

necessary and proper. But he explained that selective enforcement of that law was unconstitutional.

The trial court found Yick Wo guilty. But when his case was brought before the United States Supreme Court for its consideration, the justices unanimously reversed the lower court's decision. The Supreme Court agreed that the law was proper, but stated that unjust discrimination in its administration was not. The city wouldn't give a reason for its discrimination. So the Court presumed that the city discriminated on the basis of nationality alone. Yick Wo was released.

FAIR PROCEDURES AND YOU

HAVE YOU EVER BEEN STOPPED AND FRISKED by a policeman who thought you matched the description of a wanted criminal?

Have you ever been arrested for shoplifting or possession of marijuana?

Have you ever been the defendant in a civil trial -- accused of injuring another person when your car rear-ended his on a crowded freeway?

If your answer is yes to any of these questions, then the idea that fair procedures exist to safeguard your rights probably means a great deal to you. You are aware of how important it is to know exactly of what you are accused, to be able to consult with an attorney before you go to court, and to be entitled to an unprejudiced jury to hear your case.

If your answer is no, terms like "due process," "search and seizure," and "equal protection" may seem quite abstract and far-removed from your everyday life.

However, what's important to you is that these procedures do exist -- whether you've ever had occasion to use them or not. And these fair procedures were created to protect you as the innocent victim, as well as the accused.

These fair procedures guarantee your right to privacy -- to know that an armed officer cannot crash through your door and ransack your home, looking for a cache of stolen goods you've never seen.

These procedures guarantee your right to free speech and a free press -- to know that you can speak out against the government without fear of repression or censorship.

These procedures guarantee your right to life, liberty, and property -- to know that you cannot be jailed or fined without a fair trial, even if you're guilty.

All of these rights are essential to those of us who would live as free men and women in a free society.

Sample Mock Trial

NOTES TO TEACHER

Role-playing a court trial can be an especially effective means of giving your students direct experience with some of the ways in which our legal system functions. Student participation in a mock trial is an enjoyable way to learn about our courts, and it can make future classroom discussions about our legal system or a visit to your local court in session a more meaningful experience for your students.

Fact situations used in a mock trial may be based on an actual court decision or on a set of hypothetical circumstances dealing with either a civil or criminal matter. This hypothetical case, *People v. Hallmark*, is based on an actual decision made by the California Court of Appeals in 1971. However the facts have been somewhat changed so that the decision will be a closer one for the jury to make. (The case is programmed so that two of the defendants may be found guilty, while the third may be acquitted.) Several additional witness roles have been added to allow more students to participate in the proceedings.

This packet of materials should provide you as the teacher with all of the information you and your students will need to conduct the trial in your own classroom. In addition to the "Notes to Teacher" section, these materials include:

1. *"Case Fact Sheet" -- explanation of facts and circumstances leading up to the case, People v. Hallmark.*

2. *"Role Sheets" -- explanation to each student player of what his role in the proceedings will be and of what he should testify to if he is a witness.*

3. *"Case Procedures Sheet" -- explanation of procedures to be used in conducting the arraignment, pretrial hearing, trial, and sentencing of the accused.*

4. *"Complaint" -- facsimile of case "Information" or the charges against the accused.*

5. *"Jury Instruction Sheet" -- explanation to the jurors of how to consider the evidence presented during the trial.*

If you decide to put on this mock trial in your classroom, here is how to go about it:

1. Teacher should: (1) read the entire kit; (2) discuss background material and the fact situation of *People v. Hallmark* with entire class; (3) assign roles to students and answer students' questions about their roles, being certain to talk individually with the students who will play the roles of the judge and the attorneys; and (4) during the actual proceedings act as a supervisor, intervening only as necessary to give information or answer questions.

2. Background to be gone over in class before discussion of this case would include the factual material in "Fair Procedures," especially the section dealing with "Search and Seizure" -- and any additional information you feel would be helpful.

3. Time required is four to five class periods. You will need one or two periods to discuss background material and the case fact situation, which should be duplicated so that each student may have his own copy. You will also need time to answer individual questions. You will need two class periods for the arraignment, pretrial motion hearing, trial, and sentencing hearing. And you may well want to spend a fifth day discussing the questions that are bound to arise during the proceedings.

4. Roles to be assigned include the Judge, Bailiff, Court Clerk, Court Reporter, Assistant District Attorney, Public Defender, Attorney, 3 Defendants, 2 Arresting Officers, 6 Witnesses, 13 Jurors, and the Probation Officer. This will involve 32 students in the trial. If you have a smaller class, you may omit the roles of the Court Reporter and the Juror to be excused for "cause."

   When you assign the role of the Judge and the 3 Attorneys, it probably would be best to choose talented students who are articulate and able to think critically.

   Give each student a copy of the "Role Sheet" for his part.

   Give the Judge a copy of each "Role Sheet," the "Case Procedures Sheet," and the "Jury Instructions Sheet."

   Give each Attorney a copy of the "Role Sheets" for his client(s) and all of the Witnesses both for and against his clients. Also give the Attorneys a copy of the "Case Procedures Sheet." Give the District Attorney two copies of the "Complaint Sheet."

   Give the Court Clerk a copy of the "Complaint Sheet."

   Caution all of the students not to discuss their roles with anyone, unless you specifically tell them to do so. It will be necessary for the attorneys to discuss the testimony to be given during the proceedings with their clients and witnesses. It will also be necessary for each attorney to draw up a list of questions he will ask each of his witnesses and the witnesses against his client. You should check over the lists with the student to make sure he hasn't omitted any essential questions.

5. Jurors should also review their roles with you. Their "Role Sheets" will tell them how to consider the evidence presented during the case, but it would be a good idea to review this material with them before the proceedings start. When it is time for the Jurors to deliberate, you may: (1) have them leave the classroom and reach a decision while the other students are silently writing down their own decisions and the reasons why they decided as they did; or (2) ask the jury to deliberate aloud in the classroom while the other students listen to their discussion but refrain from making any comment.

6. Scenario for the mock trial should include arranging your classroom to look as much like a courtroom as possible, using the lectern for the judge's bench; the teacher's desk (placed to the right of the lectern) for the Court Clerk and the Court Reporter; a chair for the witness stand placed to the left of the lectern; the jury off to the side; the attorneys at desks facing the lectern, with their clients at their sides; the bailiff at the door to the classroom. The judge may wear a choir robe if he wishes and witnesses may even dress for their parts.

Probably the most difficult part of the proceedings to conduct will be the pretrial motion hearing. The procedures for the hearing are outlined in the "Case Procedures Sheet." However the students may need your assistance in defining the issues which will determine whether the Officer's search of the defendants' garage was or was not legal. The issue turns on whether or not the Officers had probable cause to be on the property without a search warrant and whether or not the garage door was open.

In this case the Officers did have good reason to believe that the burglars they were looking for might live in the brownshingle house. They had seen the car, described as being at the scene of the burglary, in the driveway of the house, and they had questioned a neighbor who told them that she had seen a number of expensive items, such as record players, being carried in and out of the house. And as long as the garage door was open and the stolen goods in plain sight, no actual search occurred.

During the pretrial hearing the Officers will testify that the garage door was definitely open on the night of the arrest. Defendant Larry Hallmark will testify that he "thinks" the door was closed.

Based on this testimony, the Judge should refuse the motion and rule that the evidence of the stolen merchandise can be admitted during the trial.

CASE FACT SHEET

People v. Hallmark

At about 9 p.m. on April 7, officers Eugene Kent and Henry Lowell responded to a report of a burglary, which had taken place between 5:30 and 9 p.m. that evening, while the victim Robert Mason and his wife Janet were celebrating their anniversary at the home of friends.

When the officers arrived at the Mason home, located at 12 Stonecrest Way in suburban Los Arboles, the victim showed them a broken window in the rear door which the burglars had smashed to gain entry into the house. The Masons listed as stolen a very expensive component stereo system, a portable color television, a wristwatch, and two cameras. Robert Mason told the officers that all of the missing items were marked with his social security number, engraved with a special tool he and his wife had recently purchased.

Officers Kent and Lowell then questioned a number of the Mason's neighbors on the chance that someone had seen and would recall any strange person or vehicle being near the Mason home that evening. Officer Lowell questioned David Farber, age 12, and his sister Nancy Farber, age 9, who lived directly across the street from the Masons. David reported that while his parents were shopping -- at about 6 p.m. -- the family dog Rags began to bark. Both David and Nancy went to the front door to let their dog inside. And at this time -- just before sunset -- the youngsters saw three men getting into a car in front of the Mason house. One of them was carrying a rectangular box, which David thought could have been a stereo speaker. David was certain that the car the men drove was a Chevrolet just like his grandparents' car, and he reported that it was painted bright gold and had a huge dent in the front door on the driver's side. The children couldn't be certain of what the three men looked like. They did agree that the driver was quite tall -- at least 6 feet; he had blond hair and was dressed in a brown leather jacket. The other two men, they thought, were shorter and heavier, and one had dark hair and a mustache. But they couldn't be more positive in their description as they had looked mostly at the car.

Ten days later on the evening of April 17, officers Kent and Lowell were cruising through an older, rundown neighborhood of Los Arboles on their regular patrol. The officers were hoping to spot a gold color Chevrolet with a badly dented door, such as the one described by the Farber children, because that same car had been mentioned as being near the scene of several burglaries during the past few weeks. While the officers really didn't expect to find the car, they continued to watch for it. And at about 7:30 p.m. they saw -- parked in a driveway under a street light -- a car that matched exactly their description. No lights were on in the dilapidated brownshingle house where the officers believed the burglars might live.

The officers walked to the house next door and talked with a Mrs. Mabel Wilkins, who told them that three young men had been living in the brownshingle

house for about four months. And "yes," she said, she had seen a number of things being moved in and out of the house. "Nice things, too," she commented, "like record players." Mrs. Wilkins didn't tell anyone about the things she saw because it wasn't "none of my business" and she didn't want to get involved.

Officer Lowell then approached the front door of the suspects' house and knocked. No one answered. Meanwhile officer Kent walked over to the car and looked inside; he could see nothing. He then noticed the door to the garage next to the house was open and called out, "Anybody there?" When no one answered, officer Kent shined his flashlight in the open door and saw a portable television set and a number of stereo components stacked on a bench against the side of the garage.

The officers sat in their car in front of the house, drinking coffee, and waiting. Within about twenty minutes two men approached on foot. One was tall and blond and wore a dark-colored jacket that appeared in the dim light to be brown leather. The other man was short and stocky and had brown hair and a mustache. Officers Kent and Lowell arrested the young men on the sidewalk in front of their house.

The two men identified themselves as Larry Hallmark and Keith Dailey, both students and roommates in the brownshingle house. Both claimed that they were innocent and said that if there was anything stolen in their garage, it wasn't theirs. Hallmark and Dailey claimed that Douglas Evans, their third roommate, had let his girlfriend store some stuff in the garage, and said, "If anything stolen is in there, it must be hers." Dailey and Hallmark said they barely knew Evans, who had just moved in three weeks before after answering their "roommate wanted" notice in the student newspaper.

Later that evening the third roommate, Douglas Evans, was arrested as he approached the back door of the house through the adjacent alleyway. Evans acted dumbfounded and would only say that he'd been living in the house for just three weeks and didn't know Hallmark or Dailey well and had never been in the garage after he put some boxes in there on the day he moved in. "I'm innocent," he said, "and I want to talk to a lawyer."

ROLES

JUDGE CHRISTOPHER W. POWELL, JR.

You are a judge of the Superior Court for the County of Los Arboles. At age 63, you have been a judge for 15 years. You are the "trier of fact" in the case *People v. Hallmark*. You stand between the accused and the law, and you must see to it that the defendants are considered innocent until proven guilty, and that they receive their rights of due process -- including the right to face their accusers, the right to have witnesses testify on their behalf, and the right to a speedy, public, and fair trial. You are responsible for everything that happens in your courtroom and you must maintain an orderly, dignified atmosphere at all times. You will conduct a pretrial hearing on the legality of some evidence to be presented during the trial; you will arraign the defendants; you will conduct the trial, including instructing the jury on evidence and the law; and, if the defendants are found guilty, you will sentence them. You will receive copies of the "Case Fact Sheet," all of the "Role Sheets," the "Case Procedures Sheet," and the "Jury Instructions Sheet." Read them over carefully and discuss them with your teacher in advance of the trial.

BAILIFF

You are the Bailiff, and it is your duty to maintain order in the courtroom. You will also take the defendants into your custody, if they are sentenced to county jail or state prison at the end of the trial.

CLERK

You are the court officer and you will: (1) call the court to order before each stage of the proceedings. Your part reads -- "Please stand. Hear ye, hear ye, the court is now open and in session. The Honorable Judge Christopher W. Powell, Jr., presiding. All persons having business before the court come to order. The case of *People v. Hallmark*. Are all persons connected with this case present and prepared? Are your witnesses present? Let the record show that all parties in the case of *People v. Hallmark* are present and prepared. Be seated. The court is in session." (You may leave out the sentence "Are your witnesses present?" for the opening of the Arraignment and the Sentencing hearings); and (2) each time a witness is called to testify, you will administer the oath before the witness is seated on the stand. Then ask the witness to raise his right hand and ask: "Do you swear that the statements you are about to make are the truth, the whole truth, and nothing but the truth, so help you God?"

COURT REPORTER

You are the Court Reporter and it is your job to take down every word that is said during the course of these proceedings. You may use a tape recorder to take down what is said, so that you will be able to replay part of the testimony, should you be requested to do so by the judge or one of the attorneys.

ASSISTANT DISTRICT ATTORNEY ANDREW LARSON

You will prosecute the case of *People v. Hallmark* for the County of Los Arboles and the State of California. You believe that all three of the defendants are guilty of burglary according to Sections 459 and 460 of the California Penal Code, and you will try to prove your case by the presentation of certain evidence. This is your role: (1) At the pretrial hearing there will be a motion to suppress the evidence of the portable television set and the stereo components which belong to the victim Robert Mason. The defendants' attorneys will say that officer Eugene Kent found the stolen goods during an illegal search of the defendants' garage. You will argue that the policeman had every legal right to be where he was in the course of his investigation of a burglary, and further that no search took place as the stolen items were in plain sight of the officers inside the open garage door; (2) At the arraignment you will deliver a copy of the complaint against the defendants to their attorneys; and (3) At the trial you will make an opening statement, including your arguments against the defendants and the evidence to back up those arguments. You will examine your own witnesses who will include Officer Eugene Kent, Officer Henry Lowell, David Farber, Nancy Farber, Mabel Wilkins, and Charles Adams. You will cross-examine the witnesses for the defense after they are questioned by the defendants' attorneys. And you will make a closing statement to the jury to summarize your case and attempt to convince the jury to make a decision on behalf of your position. You will receive copies of the "Case Fact Sheet," the "Case Procedures Sheet," and copies of the "Role Sheets" indicating the testimony your witnesses will present.

DEFENSE ATTORNEY LEE KAUFMAN

You are Lee Kaufman, age 39, and a partner in the law firm of Kaufman, Kingsley, and Kress. You handle primarily criminal cases and are considered to be a successful attorney. In the case of *People v. Hallmark* you are defending Larry Hallmark and Keith Dailey, who are accused of second degree burglary, a violation of Section 460 of the California Penal Code. You are virtually certain that your clients are guilty of taking the stolen property and storing it in their garage, but they both refuse to plead guilty and are demanding a jury trial. Therefore, it is your obligation to your clients to defend them. Your only hope of getting your clients off -- as you see it -- is to get the evidence of the stolen goods discovered by Officer Kent during his search of your clients' property declared inadmissible. Thus you will make a motion to the court to have

this evidence suppressed on the grounds that it was found during an illegal warrantless search. During the pretrial evidence hearing, you will question the officers about the search and present your client's testimony that he "thinks" the garage door was closed to the judge for his decision. You may want to read the section on search and seizure beginning on page 9 before this hearing. The only evidence you have to present during the trial is the testimony of your clients, who will attempt to provide an alibi for each other. During the trial you will: (1) make a short opening statement, including your arguments; (2) cross-examine the prosecution witnesses, trying to lessen the impact of their testimony; (3) question your clients on their own behalf; and (4) make a short closing statement during which you will summarize your case and try to convince the jury that your clients are innocent. To assist your case preparation, you will receive copies of the "Case Fact Sheet," the "Case Procedures Sheet," and your clients' "Role Sheets." If you have questions, discuss them with your teacher before the trial begins.

Public Defender Pamela Sanders

You are Pamela Sanders, a deputy public defender for the County of Los Arboles. You're 27 years old and you've been an attorney for two years. In the case *People v. Hallmark* you are appointed by the court during the Arraignment to defend Douglas Evans, who is accused of second degree burglary, a violation of Section 460 of the California Penal Code. Evans' co-defendants are represented by separate counsel. It is your job to prove that your client is innocent, and you firmly believe that he is. During the course of the trial, you will: (1) make a short opening statement, including your arguments and evidence to support these arguments; (2) cross-examine the witnesses against your client, attempting to lessen the impact of their testimony with the jury; (3) present three witnesses, Garth Dunning, Joshua Hall, and your client himself -- whose testimony you believe will clear him; and (4) make a short closing statement during which you will summarize your case and try to convince the jury that Douglas Evans is innocent. To assist you in your case preparation, you will receive a copy of the "Case Fact Sheet," the "Case Procedures Sheet," and "Role Sheets" for your witnesses, which will include what they will testify to during the trial. Discuss any questions with your teacher before the trial begins.

Defendant Larry Hallmark

You are Larry Hallmark, one of three defendants in the case *People v. Hallmark*. You are 23 years old and you go to college on a hit-or-miss basis. You're still supported by your parents, and they've retained an attorney to defend you and your roommate Keith Dailey against the charge of second degree burglary. You've never been in trouble with the law before and you don't intend to go to jail now if you can possibly avoid it. You know that you are guilty of the burglary of the Mason home, but you will testify that you had nothing to do with it. At the pretrial motion hearing you will testify *only* that your garage door was always kept closed but you will admit there was no latch on the door; you "think"

it was closed the night of your arrest. Later at the trial, you will testify that at the time of the burglary you and Keith Dailey were at the movies. You will state that if anything stolen was found in your garage, it must have been stored there by Douglas Evans -- your third roommate. You will tell the court that Evans seemed to have a lot of money for a graduate student who didn't work.

DEFENDANT KEITH DAILEY

You are Keith Dailey, a 25 year old college dropout. You come from a welfare family, and you're now working part-time as a short-order cook. You are accused, along with your roommates Larry Hallmark and Douglas Evans, of second degree burglary. You couldn't afford your own attorney, so Hallmark's father hired one to defend you both. You know you are guilty, but you will insist that you're innocent. You will corroborate Hallmark's testimony that the two of you were together at the movies on the evening of the Mason burglary. You will also testify that you had seen Douglas Evans, whom you barely know, taking something into the garage on several occasions since he moved into your rented house three weeks before. You will say, too, that you heard Evans talking with someone on the phone about where to unload "hot stuff."

DEFENDANT DOUGLAS EVANS

You are Douglas Evans, age 25, and you are accused with your two roommates of committing second degree burglary. You are a graduate student in biology, and you spend a great deal of time working on your experiments in the school laboratory. You also have a part-time job as a parking lot attendant, and you've spent very little time in your rented room. Unable to afford an attorney, you ask the court to provide a public defender to handle your case. You are innocent of any crime, and you will testify that the evening of the Mason burglary you were in the biology lab from 5 until 10:30 p.m. when you left to go home and were arrested en route. You will also testify that you had only been in the garage once to store some cartons the day you moved in. You've never heard Hallmark or Dailey talk about any burglaries, and you know nothing about any stolen merchandise.

OFFICER EUGENE KENT

Your name is Eugene Kent, and you are a rookie policeman. At age 22, you've only been on the force for three months. You will testify that you investigated the Mason burglary with your partner officer, Henry Lowell. You will also say that, based on the description of the car seen in front of the Mason home during the burglary, you and your partner decided to investigate further when you saw an identical car parked in the driveway in front of an old brownshingle house. You will describe walking over to the car, while your partner knocked on the front door of the house. You will say that you saw nothing inside the car, but then

noticed that the garage door behind the car was open. You remember calling out, "Anybody there?" When no one answered, you shined your flashlight beam on the open doorway and saw on a bench against one wall a number of stereo components and a portable television. You then assisted in the arrest of the three suspects, Hallmark and Dailey, together, and Evans, alone, later the same evening. You will give this testimony at the hearing on the motion to suppress the evidence you found in the suspects' garage, and again at the trial.

Officer Henry Lowell

Your name is Henry Lowell, and you are a veteran policeman at age 55. You will testify that you investigated the Mason burglary with your partner, Eugene Kent. You will describe the questioning of David and Nancy Farber, which led to a description of the car you believe was used by the burglars. You will also describe the interview with the suspects' neighbor, Mrs. Mabel Wilkins, who told you she had seen a number of expensive items -- including some record players -- going in and out of the house next door. You will describe knocking on the door of the suspects' house, while officer Kent investigated the parked car. You will testify that you had plenty of reason to believe that this might be the home of the burglars, even before officer Kent spotted the stolen goods. You will also mention that you had a good "hunch" about this case, something that develops with years of patrol work.

Witness David Farber

You are David Farber, age 12. You live with your family across the street from the Masons. On the evening of the burglary you saw a car parked in front of the Mason house, and you saw three men getting into the car. The car was a gold Chevrolet, the same model as the car your grandparents drive. It had, you remember quite clearly, a large dent in the door on the driver's side. You will testify that cars are your hobby and you are absolutely positive about the car. You will say that you didn't get a good look at any of the three men, but that one of them was quite tall, had blond hair, and was wearing what looked like a brown leather jacket. You did not see his face well enough to identify him positively. You have no recollection of the other two at all. The tall, blond man was carrying an oblong box that you believe could have been a stereo speaker. You didn't think that at the time, only after officer Lowell asked if that's what it might have been.

Witness Nancy Farber

You are Nancy Farber, age 9. You live with your family across the street from the Mason house. You remember seeing the gold Chevrolet parked in front of the Mason house when you went to the door to get your dog Rags inside on the evening of the burglary. You only saw one of the three men well enough to

remember what he looked like. You will testify that he was short, stocky, and dark-haired with a mustache. But it was getting too dark to see his face clearly, and you're afraid to make a positive identification of either Keith Dailey or Douglas Evans. You're certain, however, that this person was not Larry Hallmark.

WITNESS MABEL WILKINS

You are Mabel Wilkins, age 72, and you live next door to the three young men arrested for burglary of the Mason home. On the evening of the arrest, you will testify that the two officers knocked on your door and asked you who lived next door. You will say that you told them it was the three defendants, although one -- Douglas Evans -- had just moved in recently. You will also testify that two of the young men -- Hallmark and Dailey -- were rude to you, picked your flowers, stole your newspaper on occasion, and played loud music every night. You will say that you were afraid to get involved, even when you saw them hauling expensive-looking televisions and record players in and out of the house. You're certain you've seen Larry Hallmark doing this, but you can't be sure about Keith Dailey or Douglas Evans. You will say that you were afraid of Hallmark and that you don't like to interfere in other people's business.

WITNESS CHARLES ADAMS

You are Charles Adams, the owner and operator of a small secondhand stereo store, The Recycled Sound. You are 48 years old and you try to run an honest business. But you are aware that from time to time, people bring components into your shop that they didn't come by honestly. You will testify that during the past year you have purchased several components from Larry Hallmark and Keith Dailey, although you never saw the two of them in your store together. In fact, you didn't even know they knew each other. You will also testify that to the best of your knowledge you have never seen Douglas Evans before and that you certainly have never done any business with him. Finally you will swear that two days after the Mason burglary, Larry Hallmark called you and asked if you would be interested in purchasing a couple of good, used speakers real cheap. He told you he was selling them for his brother who was moving to the East coast. He didn't bring the speakers in, as you told him they would be hard to re-sell because they were so expensive -- even secondhand. You are certain the person you spoke to on the telephone was Larry Hallmark. He made specific reference to your earlier transactions and you recognized his voice right away.

WITNESS GARTH DUNNING

You are Garth Dunning, a professor of biology at Los Arboles University. You will testify on behalf of your student, Douglas Evans. You will state that you have known Evans for five years, and you believe him incapable of committing

any crime. You will also state that Evans' work card in the biology laboratory indicates that he was present there on the evening that the Mason home was broken into. You didn't see Evans there personally, but you have never known him to lie and "if he says he was in the lab, then he was."

WITNESS JOSHUA HALL

Your name is Joshua Hall, and you are a graduate biology student at Los Arboles University. You are a good friend of Douglas Evans, and you will testify on his behalf. You will state that you have known Doug for three years and that you once roomed together. You will state that you are certain he didn't burglarize anyone of anything. And you will testify that you saw him in the biology lab on the night of the burglary at about 7:30 p.m. You will further testify that Doug told you he was quite tired because he had been working there all afternoon. You left the lab at 7:40 p.m. and didn't see your friend again that night.

JUROR

One who is accused of a crime has a constitutional right to have the question of his guilt or innocence decided by a jury of twelve men and women.

Jurors in your Superior Court are selected from the rolls of voters living in the city of Los Arboles. In most instances then, the guilt or innocence of a defendant is decided by a cross-section of people from all walks of life, who have a common interest in seeing that no man is convicted of a crime unless he is guilty beyond all reasonable doubt. Legal history is satisfied that twelve minds working together as a jury toward these objectives are, with rare exceptions, correct in their verdict.

All prospective jurors in the case *People v. Hallmark* will be questioned by the judge. And the attorneys for the prosecution and defense may challenge any juror they believe is not qualified. A juror would not be qualified, for example, if he is related to a party or the attorney for a party, or if for some reason he has a bias or prejudice concerning a party or one of the attorneys, or the offense committed, or if he has already made up his mind about the case before hearing the evidence. An unqualified juror may be excused for "cause." And any number of jurors not qualified may be excused for cause. In addition, each attorney has at least ten challenges called "peremptory" challenges by which a juror may be excused without any reason at all being given.

A juror is a judge in a very important respect. Each juror must judge what the truth is -- which witnesses are to be believed and what written or other evidence is true and tends to show the innocence or guilt of the accused. In a criminal case all twelve jurors must be convinced beyond a reasonable doubt that the defendant is guilty. To arrive at a verdict, the jury deliberates in a jury

room -- that is, the jurors review, talk about, and weigh the evidence; they collectively come to a decision as to what facts have been proven true, and every accused is presumed innocent. If the jury decides that from all the evidence there remains a reasonable doubt as to the defendant's guilt, it is their duty to find the defendant not guilty. If from all the evidence the jury believes that the guilt of the accused has been proven beyond a reasonable doubt, then it is the duty of the jury to render a verdict of guilty. Reasonable doubt is not beyond all doubt, but proof to a moral certainty of the truth of the charges.

Jurors are forbidden from talking about the case they are deciding, or from letting anyone outside the court talk to them about the case, until after their verdict is announced in court. Jurors cannot even talk among themselves about the case until they go to the jury room to deliberate.

The jury must be instructed by the judge as to the law that applies to the case. After the evidence is presented, the judge tells the jury the rules of law that must guide their deliberations.

The foreman of the jury, elected by the jurors when they begin their actual deliberations, will begin the discussion of the case for which the jury must reach a verdict; poll the jurors on a secret ballot until a unanimous verdict is reached; and report the verdict to the court: "Your Honor, we the jury find the defendant (innocent) (guilty) of burglary."

Juror To Be Excused for Cause

You are a prospective juror who is related to defendant Keith Dailey. You answer in the questioning that:

(1) You would never be able to convict Keith no matter how strong the evidence might be and even if you were convinced that he was guilty.

(2) If any defendant (except Keith) remained silent as he has a right to do, you would find that defendant guilty, no matter what the evidence was.

Probation Officer Stan Darling

You are Stan Darling, a deputy probation officer. It is your duty to investigate the backgrounds of the defendants Larry Hallmark and Keith Dailey. Both have been convicted of violation of Sections 459 and 460 of the California Penal Code, burglary in the second degree, which is a felony and carries a state prison sentence unless suspended. Your investigation of the defendants discloses the following:

Larry Hallmark

Larry has never before been arrested, but he was expelled from a private college in the East for stealing the key to an examination paper from the professor's home. Larry comes from a wealthy family; his parents are divorced and he isn't close to either his mother or his father. However, his banker father is paying the entire bill for his defense. Larry has had a series of jobs and has been dismissed for his poor attitude and unwillingness to work -- often simply not showing up for work in the morning. No one with whom you've spoken thinks of Larry as a hardened criminal; most characterize him as "spoiled," "lazy," "irresponsible," "thinks the world owes him a living." Larry refuses to admit he is guilty even after the jury decides that he is. His attitude is belligerent and he tells you to leave him alone.

As Probation Officer, you recommend that Larry be sentenced to one year in the county jail, subject for possible parole after six months if his attitude improves and his conduct is exemplary while in jail.

Keith Dailey

Keith has never been arrested. He was an average student in high school, thought by his teachers to be polite and quiet. He went to college for two years and then dropped out because he ran out of money. He now works part-time as a short-order cook in a Los Arboles chain restaurant. His employer feels his attendance, attitude, and performance are all above average. Keith comes from a very poor family. His father is deceased and his mother has raised seven children, all on welfare. Keith tells you in the probation interview that he knows he's guilty, but he didn't want to admit it in court because Larry Hallmark's father was paying for the attorney and Hallmark told him to keep his mouth shut. Keith tells you he is sorry for what he has done, and only hopes that someday he can get together enough money to go back and finish college. He'd like to be a counselor for underprivileged children.

As Probation Officer, you recommend that Keith be granted probation on the following terms and conditions:

(1) Receive state prison suspended sentence,

(2) Serve 30 days in the county jail,

(3) Serve 3 years on probation,

(4) Obey all laws and be of good conduct,

(5) Do not associate with Larry Hallmark, and

(6) Pay a fine.

CASE PROCEDURES SHEET

The intent of *People v. Hallmark* is to give students a chance to participate in our legal process. And of course, this process does not begin or end with a trial. Many, many cases -- both civil and criminal -- never go to actual trial. A case may be settled before trial if the defendant pleads guilty any time before trial, beginning with his arraignment. Or it may be settled during the preliminary hearing if the court finds there is weak evidence or barely enough evidence to hold the defendant for trial. Pretrial conferences between the attorneys for the defense and prosecution may lead to a plea bargain -- an agreement that the defendant will plead guilty to a lesser charge, or for a recommended light sentence to the pending charges.

In *People v. Hallmark*, the three defendants have already been arraigned and have had their preliminary hearing in Municipal Court. And they have been bound over to stand trial on felony burglary charges in Superior Court. Specific procedures for role-playing the Superior Court arraignment, pretrial motion hearing, trial, and sentencing hearing follow:

I ARRAIGNMENT

The purpose of the arraignment is to: (1) identify the defendant; (2) inform him of his constitutional rights; and (3) advise him of the charges against him. This is how to arraign the defendants:

A. *Bailiff calls the court to order.*

B. *Judge calls the case, making sure that the defendant is present.*

C. *Judge inquires if defendants are represented by counsel, if they wish it. If the defendant cannot afford an attorney, the judge will appoint a public defender to represent him.*

D. *Judge informs the defendant of his constitutional rights. (These rights are outlined on page 5 of "Fair Procedures.")*

E. *District Attorney hands each defense attorney a copy of the Complaint. "I hand your attorney a copy of the information charging you with one count with the offense of second degree burglary, as set forth in Sections 459 and 460 of the California Penal Code."*

F. *District Attorney then asks the defense attorney if the defendant is ready to plead. The judge asks each defendant separately: "How do you plead to the charge of burglary as set forth against you in the information?"*

G. *Judge assigns a date to guarantee the defendants a speedy trial. The defendants' attorneys may waive their right to a speedy trial and delay for a short time to better prepare their defense.*

II Pretrial Motion Hearing

The purpose of this hearing is to determine if certain evidence, in this case the portable television sets and the stereo components, may be admitted as evidence during the trial. This hearing is usually held just prior to the start of the trial. The defense attorney makes the motion for the hearing and he must specify in his motion the exact "things" or objects to be suppressed. He must also include with his formal, written motion a list of "point and authorities," indicating to the judge the law that he believes applies in his case. The defendant then has the burden of proving the evidence was illegally obtained if the search was *with* a warrant. However, when the defense establishes that an arrest was made *without* a warrant or that private premises were entered or a search made without a search warrant, then the burden of proof rests on the prosecution to show proper justification for the entry or search. In *People v. Hallmark*, proceed like this:

A. *Bailiff calls court to order.*

B. *Defense attorney makes his motion that the evidence of the televisions and stereo components, obtained during an unreasonable, warrantless search, be suppressed.*

C. *District Attorney puts the arresting officers Kent and Lowell on the stand and questions them in an attempt to show that the search and seizure -- if, indeed, a search did occur -- was entirely legal.*

D. *Defense attorney cross-examines the prosecution witnesses in an attempt to lessen the impact of their testimony.*

E. *Defense attorney puts his own witnesses Larry Hallmark and Keith Dailey on the stand to try to prove that the search was not legal.*

F. *District Attorney can then cross-examine the defendants, but he can only refer to testimony given during direct examination.*

G. *Judge makes and announces decision to the court.*

III Trial

The purpose of the trial is to determine if the defendants are innocent or guilty. To proceed:

A. *Bailiff calls the court to order.*

B. *Court clerk calls the case.*

C. *Judge selects the jury.*

1. *12 prospective jurors are seated in the jury box.*

2. *Clerk swears in prospective jurors.*

3. *Judge tells them this a criminal case, informs them of the charges against the accused.*

4. *Judge questions the prospective jurors. Restrict questions to four or five each: name, occupation, ability to be fair to defendant in this type of case, personal knowledge of any participant in trial, ability to decide issues separately for each defendant.*

5. *Attorneys may challenge for cause any juror they have concrete reason to believe would not be able to hear the case fairly, i.e., a juror who knows one of the defendants or attorneys.*

D. *Judge gives opening instructions telling jury how to consider the evidence they will hear. Material is included on "Jury Role Sheet."*

E. *Attorneys for both the prosecution and the defense make short opening statements on what they expect to prove. They cannot argue the case at this time. The District Attorney goes first.*

F. *The victim and the witnesses are examined first by the prosecutor and then cross-examined by the counsel for the defense. Each witness is sworn by the clerk as he takes the stand. Order of Witnesses: Officer Eugene Kent, Officer Henry Lowell, Witness David Farber, Nancy Farber, Mabel Wilkins, Charles Adams. (During the testimony, an attorney may object to certain testimony and ask the judge not to admit it. This might happen if a witness gives his opinion as to what happened, rather than sticking to the facts -- i.e., "I'm sure that car's fender was dented as the defendants escaped from the scene of the crime." The witness couldn't know this for a fact unless he saw it happen.)*

G. *The defendants and their witnesses are examined first by their own attorneys and then by the District Attorney. Each witness is sworn by the clerk as he takes the stand. Order of Witnesses: Larry Hallmark, Keith Dailey, Douglas Evans, Garth Dunning, Joshua Hall.*

H. *First the prosecutor and then the defense attorney give closing arguments, summarizing their cases and attempting to convince the jury to make a decision on behalf of their client or position.*

I. *Judge reads the "Jury Instructions Sheet" to the jury and directs them to retire and decide upon a verdict.*

J. *The judge receives the verdict from the jury and announces it. He thanks the jury for their service and dismisses them.*

K. *Judge asks the Probation Officer to prepare a report after investigation of each defendant who was found guilty. Judge also sets the date for judgment and sentence hearing.*

IV SENTENCING

The Probation Officer will prepare a report on the background of the defendants, including his recommendations for disposition of their case. The Probation Officer will then submit these reports to the judge for his consideration prior to the sentencing hearing. At the time of the hearing, this is what happens:

A. *Bailiff calls the court to order.*

B. *Judge reviews recommendations made by the Probation Officer. (For our purposes, the Probation Officer will make his report orally before the court.)*

C. *The District Attorney may then argue to the judge that the defendants should receive a stiff sentence. And the defense attorney may argue for a light sentence, pointing out his client's previous good record, etc.*

D. *Judge pronounces sentence on the defendants -- in this instance, accepting the Probation Officer's recommendation.*

COMPLAINT SHEET

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE CITY AND COUNTY OF LOS ARBOLES

PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff,
vs.
LARRY HALLMARK, KEITH DAILEY AND DOUGLAS EVANS,
Defendants.

NO. 1

INFORMATION

LARRY HALLMARK, KEITH DAILEY AND DOUGLAS EVANS are accused by the District Attorney of the City and County of Los Arboles, State of California, by this information, of the crime of felony, to wit: Violating Sections 459 and 460 of the Penal Code of the State of California committed as follows: The said defendants did on or about the 7th day of April, 1971, at the City and County of Los Arboles, State of California, then and there commit an act of burglary in the second degree.

ROBERT T. UNDERWOOD, DISTRICT ATTORNEY

By Andrew G. Jarvis
Assistant District Attorney

The Penal Code of the State of California provides, in pertinent part, as follows:

Section 459:

"Every person who enters any house, room, apartment, tenement, shop, warehouse, store, mill, barn, stable, outhouse or other building, tent, vessel, railroad car, trailer coach as defined by the Vehicle Code, vehicle as defined by said code when the doors of such vehicle are locked, aircraft as defined by the Harbors and Navigation Code, mine or any underground portion thereof, with intent to commit grand or petty larceny or any felony is guilty of burglary."

Section 460:

(1) "Every burglary of an inhabited dwelling house, trailer coach as defined by the Vehicle Code, or building committed in the nighttime, and every burglary, whether in the daytime or nighttime, committed by a person armed with a deadly weapon, or who while in the commission of such burglary arms himself with a deadly weapon, or who while in the commission of such burglary assaults any person, is guilty of burglary of the first degree."
(2) "All other kinds of burglary are of the second degree."

JURY INSTRUCTIONS SHEET

Ladies and Gentlemen of the Jury:

I

It now becomes my duty to instruct you concerning the law that applies to this case.

You must not be biased against any defendant because he has been arrested or because he is here on trial. None of these facts is evidence of his guilt of the alleged offense.

II

The only evidence in this case is the testimony of the witnesses and the stereo equipment and portable television. The statements of the attorneys, made in opening statements or closing arguments, are not evidence and cannot be accepted by you as evidence.

III

Evidence of a defendant's character as to the traits of honesty and integrity may be considered by you because it may be reasoned that a person of good character as to traits of honesty and integrity would not be likely to commit the offense of burglary.

IV

You are the exclusive judges of the believability of a witness's testimony. In deciding the believability of the testimony of a witness you may consider, among anything else that tends to support or not support his testimony, the following:

1. *Whether the facts as testified to make common sense;*
2. *His ability to see or hear the facts he testified to;*
3. *Whether there is any bias, prejudice or other reason for the witness not telling the truth;*
4. *Statements made by a witness before trial which are inconsistent with his testimony.*

If a witness has wilfully lied in an important part of his testimony, you should distrust the rest and you may, if you feel it proper, disregard all his testimony.

You should note, though, that one may have a poor memory as to the facts he has seen or heard. Moreover, two persons witnessing an event will often see or hear it differently.

V

The testimony of one witness, who you fully believe, is enough to prove any fact.

VI

When one intentionally does an act the law says is a crime, he is acting with criminal intent, even though he may not know that his conduct is unlawful, or even though he may not intend to violate the law.

VII

A defendant in a criminal action is presumed to be innocent unless and until he is proven guilty, and in case of a reasonable doubt whether his guilt is satisfactorily shown, he is entitled to an acquittal. This presumption places on the State the burden of proving a defendant guilty beyond a reasonable doubt.

VIII

Every person who enters any house or any structure of the type shown by the evidence of this case, with the specific intent to steal, take and carry away the personal property of another of any value with the specific intent to deprive the owner permanently of his property, is guilty of burglary.

The essence of a burglary is entering such a place with such specific intent, and the crime of burglary is complete as soon as the entry is made, regardless of whether the intent thereafter is carried out.

IX

The mere fact that a person was in conscious possession of recently stolen property is not enough to justify his conviction of burglary. It is, however, a circumstance to be considered in connection with other evidence to warrant a finding of guilty. There must be proof of other circumstances tending of themselves to establish guilt.

In this connection you may consider the defendant's conduct, his false or contradictory statements, if any, and any other statements he may have made with reference to the property. If a person gives false account of how he acquired possession of stolen property this is a circumstance that may tend to show guilt.

X

If you find the defendant guilty of the crime of burglary, I instruct you that it is burglary in the second degree as a matter of law.

XI

In this case, you must decide separately whether each of the three defen-

dants is guilty or not guilty. If you cannot agree upon a verdict as to all of the defendants, but do agree upon a verdict as to one or more of them, you must render a verdict as to the one or more upon which you agree.

XII

You must not discuss or consider the subject of penalty or punishment in your deliberations.

XIII

You shall now retire and select one of your number to act as foreman or forelady who will preside over your deliberations. In order to reach a verdict, all twelve jurors must agree to the decision. As soon as all of you have agreed upon a verdict, you shall have it dated and signed by your foreman or forelady and then shall return with it to this room.